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IN THE

Supreme Court of the United States

October Term, 1966.

No. 487

ALLISON T. WILLIAMS,

Petitioner,

v.

RAYMOND W. ANDERSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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OCTOBER TERM, 1966.

No.

ALLISON T. WILLIAMS,
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v.

RAYMOND W. ANDERSON,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, entered in the above entitled case on June 1, 1966.

CITATION TO OPINIONS BELOW.

The opinion of the Supreme Court of Delaware (App. 1a) [1] on the direct appeal of petitioner's conviction is reported at 206 A. 2d 501 (1964). The opinion of the United States District Court for the District of Delaware (R. 2a),[2] denying petitioner's collateral attack by Petition for a Writ of Habeas Corpus, is reported at 245 F. Supp. 185 (D. Del. 1965). The opinion of the United States Court of Appeals for the Third Circuit (App. 9a) is reported at 361 F. 2d 335 (3rd Cir. 1966).

1. "App." references are to the Appendix to this Petition.

2. "R." references are to the Appendix printed for the Court of Appeals, nine copies of which have been filed with this Petition.

JURISDICTION.

The judgment of the United States Court of Appeals for the Third Circuit was entered on June 1, 1966 (App. 8a). A Petition to Extend the Time for Filing a Petition for Reargument was denied on June 24, 1966 (App. 10a). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTIONS PRESENTED.

1. In a criminal prosecution, does a procedure whereby the trial judge, in the presence of the jury, hears evidence of the defendant's incriminating admissions to the police and of the circumstances under which the admissions were made, then rules that certain of the admissions were involuntarily made, and then instructs the jury to disregard those admissions which he has ruled involuntary and inadmissible, protect a defendant's right to be free of a conviction based upon involuntary admissions, as guaranteed by the Due Process Clause of the Fourteenth Amendment?

2. In a criminal prosecution, does a procedure whereby the trial judge leaves to the jury the factual determination as to when a certain promise was made by the police to the defendant which caused the defendant to make incriminating admissions, and instructs the jury to disregard those admissions made after the date it finds the inducing promise to have been made, protect a defendant's right to be free of a conviction based upon involuntary admissions, as guaranteed by the Due Process Clause of the Fourteenth Amendment?

CONSTITUTIONAL PROVISION INVOLVED.

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

> "Section 1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."

STATEMENT OF THE CASE.

Petitioner stood trial before a jury on June 12, 1961 in the Superior Court of Delaware upon an indictment charging him with burglary of a jewelry store in Wilmington, Delaware on December 5, 1959.

A substantial part of the case against the petitioner consisted of his oral incriminating admissions to the police and inculpatory conduct after he waived extradition from New Jersey and surrendered to the custody of two police officers of the City of Wilmington, Delaware on December 30, 1959.

Police Lieutenant Celano testified before the judge and jury as to various incriminating statements made by the petitioner during the return trip from New Jersey to Wilmington, Delaware on December 30, 1959. After Lieutenant Celano and his accompanying police officer, Sergeant Merritt, testified to various incriminating statements and acts of the petitioner after arriving back in Wilmington, the trial judge inquired of Sergeant Merritt:

"Q. . . . How much faith did they have in you. What did you promise them?

A. There were no promises made whatsoever, your Honor. The Attorney General, Janvar Bove himself, was brought to the Detective Division.

Q. I am not talking about the Attorney General. I am talking about you and your companion officer during all this period of time. Did you at any time directly tell to them or say to them words that inferred that you were going to grant them a favor for this consideration they were giving to you?

A. Yes, sir.

Q. What was it?

A. I believe that should be repeated not in the presence of the jury, your Honor.

Q. I want to know what it was. Speak it out.

A. . . . With the Attorney General Office's permission we told them that if he cooperated with us, got the jewelry back for us, pled guilty to burglary 4th degree, they would not be tried on a charge of larceny. That was the only promise made to them and that was with the cooperation of the Attorney General's Office." (App. 11a-12a).

Shortly after the above occurred, while the jury was taking a recess, the trial judge ruled that all incriminating statements made by the petitioner subsequent to the above promise would be considered involuntary and inadmissible (App. 12a-13a). In answer to the Court's inquiry, Sergeant Merritt stated, in the jury's absence, that the promise was made on January 16, 1960 (App. 14a). Thereupon, the jury returned to the courtroom and was instructed that all statements made by petitioner to the police after January 16th had been stricken and should not be considered (App. 14a-15a).

Under cross-examination Sergeant Merritt testified that he knew petitioner did not have the means to secure substantial bail and that he told petitioner his bail would be reduced if he cooperated and some jewelry was recovered from New Jersey (App. 15a-17a). The bail was in fact reduced, which led to certain incriminating statements and conduct on the part of the petitioner. The Court thereupon struck all testimony of petitioner's incriminating statements and conduct subsequent to December 31, 1959, the date on which the police witnesses admitted that the promise of bail reduction occurred, and instructed the jury to consider only the testimony relating to petitioner's incriminating statements prior to December 31, 1959 and to disregard the testimony relative to admissions and events occurring after that date (App. 18a).

After the prosecution rested, petitioner took the stand and testified before the jury that the promise of bail reduc-

tion took place on December 30th and not on December 31st as stated by Sergeant Merritt. He also stated that the police, on the 30th, in return for his cooperation, promised to get him a sentence of probation, if convicted, and to go to the Governor on his behalf, if necessary.

The Court charged the jury that if it believed petitioner's testimony that the police promises took place on December 30th, then it should disregard everything that took place after the 30th, but if it believed the police testimony that the promise of bail reduction took place on the 31st, it could consider everything taking place up to the 31st, including petitioner's incriminating admissions and inculpatory conduct taking place on the 30th (App. 18a-19a).

The jury was also instructed that an oral confession of guilt should not be considered if it was not free and voluntary, but proceeded through the influence of threats or promise of favor (App. 20a).

Petitioner was found guilty, the judgment of conviction being affirmed on direct appeal to the Delaware Supreme Court (App. 7a). The Court rejected petitioner's contention that the procedure followed in the trial of this case did not satisfy the requirements expounded in *Jackson v. Denno*, 378 U. S. 368 (App. 6a-7a).

Petitioner raised the same contention in an application to the United States District Court for the District of Delaware for a Writ of Habeas Corpus and was denied relief (R. 11a). Upon appeal, the United States Court of Appeals for the Third Circuit affirmed the order of the District Court, holding that petitioner's conviction "on its own particular facts" was not in conflict with *Jackson v. Denno* (App. 9a).

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court of Appeals, approving the procedure employed at petitioner's trial to determine the admissibility of his incriminating admissions, is in direct conflict with Your Honorable Court's decision in *Jackson v. Denno,* 378 U. S. 368. In the instant case, the trial judge and the jury *simultaneously* heard the testimony relating the defendant's incriminating admissions and the circumstances giving rise to those admissions. The trial judge then ruled certain admissions to have been made involuntarily and instructed the jury to disregard them.

It would appear that *Jackson v. Denno* requires that the trial judge, when making the required independent determination as to the voluntariness of an admission, must hear the admission and the surrounding circumstances in the *absence* of the jury. The whole tenor of the *Jackson* opinion was Your Honorable Court's concern with trusting a jury of laymen to make a reliable distinction between the issues of voluntariness, on the one hand, and truth, on the other hand, of a confession. Clearly, a situation where the jury must be cautioned to erase the defendant's admissions from its collective mind after the judge determines them to have been improperly admitted in evidence is what this Court intended to avoid by its ruling in *Jackson.* Indeed, the *Jackson* Court specifically questioned the ability of a jury, after being instructed to do so, to disregard a defendant's admission which it has already heard. Moreover, by approving of the Massachusetts procedure, where only those confessions are heard by the jury which the judge has independently found to be voluntary, *Jackson, supra,* at f.n. 8, this Court impliedly held that the trial judge's independent determination of the admissibility of a defendant's admission to the police must be made outside the hearing of the jury.

2. Although the rationale supporting the decision in *Jackson v. Denno* suggests that the trial judge's prelimi-

nary determination of voluntariness should not be made in the presence of the jury, the opinion does not explicitly require that the jury be excluded. It was noted in *Developments in the Law-Confessions,* 79 Harv. L. Rev. 935, 1066, that,

> "One important question in the wake of *Jackson* is whether the jury must be excluded during the preliminary hearing on voluntariness."

In *The Role of a Trial Jury in Determining the Voluntariness of a Confession,* 63 Mich. L. Rev. 381, 386, it was pointed out that a number of decisions in jurisdictions following the Massachusetts rule indicate that the judge may determine the voluntariness of a confession in the presence of the jury. If this Court intended in *Jackson* that the trial judge's preliminary determination be made in the absence of the jury, those who read the decision otherwise should be given a definitive ruling on this important question. In this connection, it should be noted that Delaware claims to be a jurisdiction following the Massachusetts rule (App. 7a).

3. The opinion of the Supreme Court of Delaware in this case asserts that the petitioner's rights were protected at trial because the judge "permitted in the absence of the jury a *voir dire* examination on the issue of voluntariness, admitted the evidence, and finally instructed the jury that it could rely on the admissions only if it found them to have been made voluntarily." (App. 7a). In fact, the only testimony that was heard by the trial judge in the jury's absence merely concerned the date on which the petitioner was promised that he would not be charged with larceny if he cooperated and pled guilty to burglary. (This covered about 3 pages out of a total of 350 pages of testimony.) Moreover, the trial judge did not admit the evidence of the admissions. Contrary to the assertion of the Delaware Supreme Court, much of the evidence of peti-

tioner's admissions was ordered stricken from the record and, hopefully, from the minds of the jurors. Perhaps the Delaware Supreme Court was overly impressed by the fact that in Appendix A to Mr. Justice Black's opinion in *Jackson v. Denno,* 378 U. S. 368, 410, 418, Delaware is listed as one of the jurisdictions employing a constitutionally permissible procedure for determining the admissibility of a confession, and *assumed* that such a procedure was followed in this case.

4. By its judgment, the Third Circuit Court of Appeals approved of the trial court's submission to the jury of a disputed fact (the date on which the police made inducing promises to the petitioner) determinative of the voluntariness issue, the trial court's failure to independently resolve the fact in dispute, and the trial court's instruction to the jury that it should determine voluntariness depending on which way it resolved the disputed fact. This was precisely the procedure which was condemned in *Jackson* as posing a substantial threat to a defendant's constitutional rights to have an involuntary admission entirely disregarded.

CONCLUSION.

It is respectfully submitted that this Court should grant a writ of certiorari to further clarify the procedure to be followed to determine whether a defendant's incriminating statements are admissible in evidence and to correct the interpretation given by the court below to the landmark decision in *Jackson v. Denno.*

Respectfully submitted,

Louis Lipschitz,
Jerold G. Klevit,
Lipschitz and Chalfin,
Attorneys for Petitioner.

OPINION OF THE SUPREME COURT OF DELAWARE DATED DECEMBER 8, 1964.

Appeal from the Superior Court in and for New Castle County.

WOLCOTT and CAREY, Justices and MARVEL, Vice Chancellor, sitting.

WOLCOTT, Justice.

This is an appeal from a conviction of burglary in the fourth degree committed at the "House of Diamonds" in Wilmington. The trial judge signed a certificate under 11 Del. C. § 4502, and Williams was admitted to bail pending his appeal.

Williams was first tried in March, 1961 with two other defendants, one of them his brother, for the crime of which he now stands convicted. During the course of this first trial one of the other defendants successfully moved for a severance and the jury found the brother of Williams guilty, but disagreed as to Williams. Williams thereafter, in June, 1961, was tried alone and convicted by the jury. He now appeals from this conviction.

The evidence produced by the State was to the effect that Williams was arrested in New Jersey for the crime, ultimately waived extradition and was brought back to Delaware by automobile in the custody of two Wilmington detectives, arriving at police headquarters at about 7:30 P. M. of December 30, 1959.

In the course of the trip back to Wilmington Williams made several admissions to the detectives. He stated that he acted as lookout while the burglary was committed; that his role in the crime was a minor one; that he had been in Wilmington twice planning the crime, and that since he had not realized the owner of the "House of Diamonds" carried

no insurance he would do everything he could to get the jewelry back.

Prior to entering Delaware and while still in New Jersey, one of the detectives suggested to Williams that while still in New Jersey it would be best to recover the diamonds if they were still in New Jersey because it would be difficult for him to leave Delaware once he had arrived there. Williams said he did not know what he could do and that he wanted to speak to a lawyer before committing himself to do anything.

Upon arrival at the Wilmington Police Station on December 30, 1959 Williams again said he wanted to speak to a lawyer. Several telephone calls were made, either by Williams or on his behalf, to Delaware lawyers to find out if they had been retained by Williams' New Jersey lawyer to represent him. Williams actually talked with three Delaware lawyers, one of whom represented the owner of the "House of Diamonds."

Thereafter, Williams made other admissions during the course of December 31, 1959 which, while not confessions, nevertheless implicated him in the crime. In the early evening of December 31, 1959 Williams received a telephone call from which he apparently learned he could recover at least part of the stolen jewelry. The result was that Williams was promised by the police that they would do what they could to get his bail reduced if he in turn helped to recover the jewelry.

As a result, Williams was released on his own recognizance and, in the company of three police officers, returned to New Jersey where they recovered a portion of the stolen jewelry. On January 1, 1960 the owner of the "House of Diamonds" posted a bond for Williams' reduced bail, and on January 4, 1960 Williams turned over to the Wilmington police some additional stolen jewelry.

The next event in this bizarre episode was a trip in Williams' car to Florida from January 7 to 17, 1960, made by Williams and Wilmington police officers to see Williams'

brother who ultimately was convicted at the first trial. In the course of this trip Williams made other admissions to the officers implicating himself in the burglary.

All of the foregoing came out in testimony at Williams' second trial. The trial judge, when the promise to reduce bail was testified to, ruled that any admission made by Williams after such promise had been made was inadmissible in evidence because in law such an admission was induced by the promise and was therefore involuntary. After his ruling he instructed the jury to ignore testimony as to any admission made by Williams after the promise to get his bail reduced had been made by the police.

At his trial Williams' defense was alibi which he attempted to establish by a witness from Philadelphia who testified Williams was in his restaurant at or about the time the crime took place. Upon the conclusion of this witness' testimony the Deputy Attorney General prosecuting the case caused him to be arrested in the corridor outside the courtroom upon a charge of perjury. Since the trial went over to the following day, the morning newspaper of which carried an account of the arrest of the witness for perjury, Williams' counsel moved for a mistrial upon the ground that Williams' defense had been prejudiced in the minds of the jury. Upon inquiry by the trial judge of the members of the jury, it appeared that none had read the newspaper article in question. The motion for a mistrial was thereupon denied.

Upon the foregoing circumstances Williams urges upon us several reasons why his conviction should be reversed and he be given a new trial. He first argues that even though later excluded from evidence, the testimony of numerous admissions made by him after the promise of bail reduction had a cumulative prejudicial effect so as to make his trial fundamentally unfair, thus depriving him of due process of law.

At the trial when the December 31, 1959 promise of the police to get Williams' bail reduced was testified to, the

trial judge *sua sponte* ruled that any admission by Williams after that date as a matter of law must be presumed to have been induced by that promise and was therefore involuntary. He accordingly ordered such testimony struck from the record and instructed the jury that it could consider only testimony of admissions made by Williams prior to December 31 for the reason that anything subsequent to that date was made inadmissible in evidence by the promise of bail reduction. Later, during the summation by the prosecution and, as a result of an objection by defense counsel, the trial judge again instructed the jury on the point.

The second instruction arose because Williams had testified that the promise of bail reduction had been made on December 30 rather than on December 31, which the police testified to be the fact. The jury was instructed that it must resolve this fact and disregard any statement or action of Williams after the date they believed the promise to have been made which tended to incriminate him. He then inquired of the members of the jury if his ruling was understood and when it was plain that it was, the trial continued.

It appears from Williams' brief and appendix and oral argument that his inadmissible admissions and actions after December 31, 1959 were as follows: On January 4, 1960, while out on bail he delivered to the police further items of the stolen jewelry; on January 7, 1960 he returned another diamond to the police; during the trip to Florida he discussed his participation in the burglary with the police; on January 20, 1960 he returned to the police an unset stone and wrist watch; on January 28, 1960 he told the police he would plead guilty, and on March 10, 1960 he showed the police a walkie-talkie radio used in the burglary, returned a watch and diamond ring, told the police the unreturned portion of the jewelry had been disposed of, and identified the vantage point of himself as lookout.

We think the excluded testimony was at most cumulative as to voluntary admissions of Williams properly in evidence. This fact coupled with the careful instructions of the trial judge to the jury to ignore the inadmissible testimony, effectively, we think, removed any possibility of prejudice to Williams in his trial. The case is therefore entirely dissimilar to Curran v. State of Delaware, D. C., 154 F. Supp. 27, if that case be sound law, where it appeared that there had been a deliberate concealment of fact upon a minor point by a police detective on the witness stand.

[1] We accordingly are of the opinion that Williams was not prejudiced by reason of the police testimony as to admissions made after December 31, 1959 and later ordered struck from the record with appropriate instructions to the jury to ignore such testimony.

[2] Next, Williams argues that the arrest of his alibi witness and the subsequent publicity of it deprived him of due process of law. We have outlined above the circumstances under which the witness was arrested and charged with perjury. On the following day counsel for Williams moved for a mistrial by reason of the arrest in the proximity of the courtroom and the news article concerning it which appeared in the Wilmington Morning News of that day.

In accordance with the practice of the Superior Court, the jury had been instructed not to read anything concerning Williams' trial which appeared in the newspapers while it was in progress. The trial judge, following the motion for a mistrial, inquired of the members of the jury whether or not any of them had read the article in question. One only admitted having seen it. She, however, read only that portion appearing on the front page and did not pursue it on the inside pages. The objected-to portion of the article was in fact carried on an inside page of the newspaper.

At the request of Williams' counsel the trial judge then inquired of the jury whether or not any of them were aware of an incident taking place the day before near the courtroom which had some connection with the trial of Williams. The jurors answered in the negative.

[3] We think no prejudice resulted since the jury knew nothing of the incident nor of the newspaper article. People v. Malmenato, 14 Ill. 2d 52, 150 N. E. 2d 806, c. d. 358 U. S. 899, 79 S. Ct. 222, 3 L. Ed. 2d 148. Under the circumstances we would not be justified in assuming that the members of the jury in violation of their oaths answered falsely to the judge, or withheld information from him. The presumption is that members of the jury are true to their oaths. United States v. Sorcey, 7 Cir., 151 F. 2d 899, c. d. 327 U. S. 794, 66 S. Ct. 821, 90 L. Ed. 1021. Furthermore, we think our decision in Williams v. State, Del., 205 A. 2d 9, in which a very similar question came up controls.

[4] Next, Williams argues that he was denied due process of law because the trial judge submitted to the jury the issue of the voluntariness of his admissions contrary to the ruling of Jackson v. Denno, 378 U. S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908. Jackson v. Denno held that a defendant is guaranteed a right, at some stage of the proceeding, to have a fair hearing and a reliable determination of the issue of voluntariness, uninfluenced by the truth or falsity of the confession, which was not satisfied by the New York rule that the trial judge must make a preliminary determination of this issue and shall exclude a confession from evidence only if under no circumstances could it be deemed voluntary. This was held to violate the constitutional right of the defendant.

Jackson v. Denno, however, approves the rule followed in Massachusetts as safeguarding the defendant's right. In Massachusetts the rule is that the trial judge initially, fully and independently resolves the issue of voluntariness

against the defendant, and then submits it to the jury which may still determine the issue for itself despite the preliminary finding of the judge.

In Delaware the rule in such matters to be followed in the trial courts is in substance the same as that followed in Massachusetts. We have so held in Wilson v. State, 10 Terry 37, 109 A. 2d 381. We think the trial judge complied with the rule. He permitted in the absence of the jury a *voir dire* examination on the issue of voluntariness, admitted the evidence, and finally instructed the jury that it could rely on the admissions only if it found them to have been made voluntarily. This, we think, satisfies the requirements of Jackson v. Denno.

[5] Finally, Williams argues that he was denied due process of law by reason of the fact that he was denied counsel in violation of the rule of Escobedo v. State of Illinois, 378 U. S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977. We think, however, the facts before us do not remotely approach those of Escobedo v. State of Illinois, for the reason that Williams was not denied the opportunity to obtain counsel and, to the contrary, was assisted to this end by the police. If he was unable to do so at the time that fault was his and not that of the police. It is of some importance, it seems to us, that he did not ask the authorities to furnish him a lawyer, but merely that he be given the opportunity to obtain one. That he ultimately did so is the fact, for he was defended below and represented in this court by counsel of his retention.

For the foregoing reasons the conviction below is affirmed.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

This cause came on to be heard on the record from the United States District Court for the District of Delaware and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of September 1, 1965 of the District Court which denied the writ of habeas corpus be, and the same is hereby affirmed, with costs.

ATTEST:

IDA O. CRESKOFF,
Clerk.

June 1, 1966.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

(Filed June 1, 1966.)

PER CURIAM.

The judgment of conviction of appellant in the Delaware Superior Court on its own particular facts is not in conflict with Jackson v. Denno, 378 U. S. 368 (1964) or with Escobedo v. State of Illinois, 378 U. S. 478 (1964), whether or not finally held retrospective in its application or with United States ex rel. Russo v. State of New Jersey, 351 F. 2d 429 (3 Cir. 1965). In all other aspects the state trial was free from substantial error.

The judgment of the District Court will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

In the light of the United States Supreme Court decision filed June 20, 1966 in Johnson, et al. v. State of New Jersey, the application to file as of time a petition for rehearing in this case is denied.

By THE COURT,

McLaughlin,
Circuit Judge.

Dated: June 24, 1966.

EXCERPTS FROM TRANSCRIPT OF TESTIMONY.

(114)*

NORWOOD MERRITT.

NORWOOD MERRITT, called as a witness on the part and behalf of the State, being duly sworn, was examined and testified as follows:

Mr. Paruszewski: May I approach the Bench?

(Conference at side bar, not reported.)

DIRECT EXAMINATION.

By Mr. Paruszewski:

(159) * * * *

Q. Why wasn't this walkie-talkie, or the pair of them confiscated by you and then Sergeant Celano?

A. As previously testified, we were still in hopes of getting the balance of the diamonds back. We did not know at the time that all of them had been disposed of. It was only an asssumption. And if we had taken the walkie-talkies away from them and held them as evidence they would have lost complete faith into us. They would not have cooperated with us any more. We knew that.

By The Court:

Q. How much faith did they have in you, Officer?

A. Beg your pardon?

Q. You are talking about faith. How much faith did they have in you? What did you promise them?

A. There was no promises made whatsoever, your Honor.

(160)

The Attorney General, Januar Bove himself, was brought to the Detective Division.

* Figures in parentheses refer to page numbers of typewritten transcript.

Q. I am not talking about the Attorney General. I am talking about you and your companion officer, during all this period of time. Did you at any time directly tell to them or say to them words that inferred that you were going to grant them a favor for this consideration they were giving to you?

A. Yes, sir.

Q. What was it?

A. I believe that should be repeated not in the presence of the jury, your Honor.

Q. I want to know what it was. Speak it out.

A. Yes, sir. The State law in the State of Delaware is anyone that commits the crime of burglary, whatever crime committed, in the act of burglary, can also be charged against the defendants. The charge in this specific case is larceny value of $100,000 worth of jewelry.

With the Attorney General's Office's permission we told them that if he cooperated with us, got the jewelry back for us, pled guilty to burglary 4th degree, they would not be tried on a charge of larceny. That was the only promise made to them and that was with the cooperation of the Attorney General's Office.

* * *

(182)

The Court: We will take a fifteen-minute recess.

(A fifteen-minute recess was here taken.)

* * *

The Court: We have got a very interesting legal question in this case, and that is whether the promise by the officer to this defendant nullified everything the defendant said to him.

(183)

Mr. Paruszewski: That would be after the promise, of course.

The Court: Yes, but I don't know when the promise was made. Now the officer didn't testify as to when it was made, but the officer admitted that he told this defendant that if he would cooperate and help, help get the diamonds back and tell his side of the story, that he would not—promised not to prosecute him for larceny, if he would plead guilty to fourth degree burglary.

Now it doesn't seem to me to make any difference whether he pleads guilty to second degree burglary or goes on trial, if the promise was made which formed the basis of the defendant's admissions and confession, it would seem to me that that would nullify his confession from that time on.

In other words it would go to the voluntariness of this defendant's confession. A police officer can't promise a man that he won't prosecute him for a certain crime. He can't make a deal with him. But if he does, the voluntariness of his confession goes out the window. Now you will agree with that, won't you?

Mr. Paruszewski: It would be a jury problem to determine.

The Court: A jury problem? When the officer testi-

(184)

fied he did it himself? The defendant hasn't accused the officer of this. The officer has come out and admitted it.

Mr. Paruszewski: All right. Now, I will go along with your Honor on that only——

The Court: Then you will agree with me?

Mr. Paruszewski: Only things that happened after that.

The Court: Well, then, bring the officer back and find out when this happened.

Mr. Paruszewski: Out of the presence of the jury on voir dire?

The Court: Well, you can do it on voir dire and then bring the jury back, yes. Bring him up.

NORWOOD MERRITT, recalled as a witness on the part and behalf of the State, on voir dire, having been previously sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Paruszewski:

Q. Sergeant Merritt, you testified before that a certain promise was made to the defendant, Allison Williams?

(185)

A. That is correct.

Q. Is that true?

A. Yes, sir.

Q. Now specifically, what was that promise?

A. The promise was made in the presence of the Attorney General, Januar Bove, on January the 16th, when Clifford was brought back from Miami, Florida, in the Detective Division. The promise at that time was made that if he brought the jewelry back that the charge of larceny would be dismissed on him in the Attorney General's Office; they would not prosecute him on that charge providing he pled guilty to burglary in this case.

* * *

(187)

The Court: Bring in the jury.

(The jury returned to the courtroom and took their respective seats in the jury box.)

The Court: Now ladies and gentlemen, I want to make a statement to you and I want you to pay particular attention to the statement I am about to make.

There is testimony given by the two officers as to

(188)

statements made by the defendant to them concerning quite a few things. That started in December and ran through January.

Now I am instructing you that you are not to consider any statements made by this defendant to either one of these officers after the 16th of January. Statements made by the defendant to the officers that you find that he made up to the 16th are for your consideration when you deliberate, but statements after the 16th I have ruled out and I am striking all that testimony concerning those admissions.

The reason I am doing it is that on the 16th of January there was a promise made by the officers that if the defendant came in and pled guilty to fourth degree burglary the larceny charge would not be prosecuted against him. I have held that that destroyed the voluntariness of what he said subsequent to the 16th, that was the day he said it. So after that date you can't consider anything that the defendant said to the officers. But you may consider everything up to that date. Because, you see, there is no question of voluntariness up to that time for an opening on his part. But after the 16th it can be said to be tainted by a promise, and therefore it is ruled out.

Is that clear to all of you? Because it is important.

All right, proceed.

(190) * * *

CROSS-EXAMINATION.

By Mr. Snellenburg:

* * *

(193)

Q. Sergeant Merritt, the first day that you had this defendant in custody did not the question of bail also come up?

A. The question of bail was brought up the following morning when we were—that was the 31st, we were taking him

(194)

to Municipal Court and bail was set at that time.

Q. And you knew at that time that this defendant personally did not have the means to secure substantial bail?

A. That is true.

Q. And didn't you and Celano both then that day tell him if he would cooperate you would see that there was no substantial bail placed, and then in pursuance of that promise didn't you go to Judge Herlihy and ask him to fix a $500 recognizance bail that would require no cash?

A. No, sir; we did not. Bail was originally set at $60,000 by the Federal Government on the warrant that they held in New Jersey. When he was brought to Delaware on the 31st, the bail was set at $15,000, by Judge Herlihy.

On the following Tuesday, I believe it was the 2nd day of January, bail was reduced then to $5,000 because the jewelry—part of the jewelry had been returned and he couldn't——

Q. Now you told us everything but the important part, Sergeant. Why was the bail reduced in that manner?

A. Because he had showed faith by getting part of the jewelry back, and couldn't do anything in jail relative to getting the rest of it back.

Q. Before he went over to New Jersey the $500 recognizance

(195)

was fixed, wasn't it?

A. There was no $500. Just his own recognizance.

Q. Just his own recognizance?

A. That is correct.

Q. In other words no cash bond?

A. None whatsoever.

Q. That was the bond fixed before he went over in New Jersey?

A. That was to have him released so he could go over to New Jersey.

Q. And didn't you, prior to the time you went to New Jersey, tell this defendant if he cooperated you would see that no substantial bail was required?

A. We told him that the bail would be reduced if we were able to get any jewelry from Jersey, that he couldn't get any from Jersey while he was in jail.

Q. After that you went to Jersey?

A. Yes.

Q. And it was after that he told you he was only a lookout?

A. No, sir; he made that statement the very first day we interrogated him.

Q. Before there were any discussions about bail?

(196)

A. Positively. Bail wasn't set until the 31st.

* * *

(197)

The Court: Now, he wasn't under bail here; how did Judge Herlihy happen to take his bond?

Mr. Paruszewski: He was under bail when he was first arrested and brought to Delaware. That is true.

The Court: And he was placed under $5,000 bail.

The Witness: Fifteen thousand, your Honor.

By The Court:

Q. Now when was it reduced to five?

A. January the 2nd.

Q. Why?

A. Because of his cooperation by getting the jewelry back the Judge felt, or we felt, he couldn't get any more jewelry back if he was in jail, and he was unable to get fifteen thousand bail.

* * *

(198)

By The Court:

Q. All right now, Officer, let's relate here—I don't

(199)

want this jury confused. I want you to relate any statements that were made to you by this defendant from the time you obtained him in New Jersey until the 31st of December.

(Addressing the jury) And these are the only statements, ladies and gentlemen, that you are going to be able to consider, because a few minutes ago we struck the testimony from January the 16th. Now because of the promise to reduce the bail, which was reduced, so the man could get out upon his promise to go get the jewelry, we are going to strike the testimony from December 31st. You understand that?

By The Court:

Q. Now, Officer, so the jury will understand, what were the statements made by this defendant to you from the time you obtained him in New Jersey until the 31st day of December?

* * *

(354)

The Court: Ladies and gentlemen, I want to instruct you now, and it is very important in this case, the defendant says that after he returned from New Jersey with the police on the 30th, sometime after his return to Wilmington, there was a promise made by the police that if he would cooperate in helping to obtain the return of the diamonds that they would intercede to reduce his bail, help him get bail, and also intercede for his probation, and if convicted, go to the Governor—words to that effect. He says that occurred on the afternoon of the 30th after he was brought back from New Jersey, a penitentiary over there.

(355)

Now, the officers deny that. If you find that conversation took place at that time, as the defendant contends, that is, the afternoon of the 30th, then you will disregard anything that he did or said after that time.

The officers, or the State, on the other hand, contend that the conversation took place on the afternoon of the 31st, after the woman came here and talked to him, you will recall. They contend that at that time they said, "If you will help get the diamonds back we will help you to get your bail reduced so that you can get out on bail." They deny saying to him they would help him with probation; they deny saying to him that they would intercede with the Governor if convicted. But they do admit that on the afternoon, late afternoon of the 31st, that they did promise him that they would help him with his bail so he could get out if he would in turn help them secure the diamonds.

That is a promise, and, therefore, under that promise I must rule out everything that he did or said subsequent to that time. If you find it to be on the 31st, in the afternoon, then you may consider anything up to the afternoon on the 31st that he said or did. If you find that it ocurred in accordance with the defendant's theory, on the afternoon of the 30th, when he was brought back from New Jer-

(356)

sey, then you won't consider anything from the afternoon of the 30th on, that he said or did.

Is that clear to all of you? If it is not clear please raise your hand, any juror.

(There was no response.)

* * *

(398)

EXCERPT FROM CHARGE OF THE COURT.

It is contended by the State that the defendant, Allison Williams, on the 30th day of December, during his return to Wilmington from New Jersey, made an oral confession tending to prove his guilt of the alleged crime for which he is now being tried. An oral confession of guilt, ladies and gentlemen, should not be considered if it was not free and voluntary but proceeded through the influence of threats and/or a promise of favor. But a free and voluntary confession is generally deserving of the highest credit because it is against the interest of the person making it and is presumed to flow from a sense of guilt.

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